

INSTRUCTIONS AND DUTIES OF A GUARDIAN

Prepared By:

William B. Hanes, Commissioner of Accounts
Melinda Dickerson Hetzel, Deputy Commissioner of Accounts
Kenneth F. Parks, Assistant Commissioner of Account

And

William L. Loy, Probate Department Manager
Michele Timmons, Senior Probate Specialist
Lorrie Gordon, Probate Clerk

**IT IS IMPORTANT THAT YOU READ THIS
INSTRUCTION PACKET IN ITS ENTIRETY BEFORE YOU
BEGIN ADMINISTERING THE GUARDIANSHIP**

OVERVIEW:

THESE INSTRUCTIONS AND DUTIES OF A GUARDIAN (Personal Representative/Fiduciary) were prepared by the Commissioner of Accounts of the County of Loudoun and the Loudoun County Circuit Court Clerk's Probate Department to assist you in performing the general duties you have undertaken as a Guardian of an estate. It is the duty of a Guardian to be in full compliance with the legal requirements of all sections of the Code Virginia that pertains to a Guardian. These instructions address only the most commonly asked procedural questions.

The term "**Personal Representative**" or "**Fiduciary**" will be used in these instructions and will encompass and refer to a "**Guardian.**" Where appropriate, the use of any gender herein shall be deemed to be or include the other gender and the use of the singular shall be deemed to be or include the plural (and vice versa).

THESE INSTRUCTIONS ARE NOT TO BE CONSIDERED ADVICE TO A GUARDIAN OR FIDUCIARY CONCERNING ALL THE LAWS APPLICABLE TO YOUR DUTIES AS SUCH. IF YOU HAVE ANY QUESTIONS REGARDING YOUR DUTIES, YOU SHOULD CONSULT WITH AN ATTORNEY AT LAW; OR, IF TAX MATTERS ARE INVOLVED, AN ATTORNEY AT LAW OR A CERTIFIED PUBLIC ACCOUNTANT OR OTHER COMPETENT TAX AUTHORITY.

PLEASE FAMILIARIZE YOURSELF WITH YOUR RESPONSIBILITIES AND DUTIES AS SET FORTH IN THIS DOCUMENT AND THE CODE OF VIRGINIA. YOU WILL BE HELD ACCOUNTABLE FOR ALL INFORMATION SET FORTH HEREIN AND IN THE CODE OF VIRGINIA, WHETHER YOU READ THIS DOCUMENT OR NOT.

AT THE TIME OF QUALIFICATION IN THE PROBATE DEPARTMENT, THE FOLLOWING FORMS WERE GIVEN TO YOU

- ✓ **Inventory Form & Instructions**
- ✓ **Account Summary Form with Sample & Instructions**
- ✓ **Fee Schedule**

Commissioner of Accounts

The Commissioner of Accounts is an attorney at law. He is not an employee of the Commonwealth of Virginia or the County of Loudoun. The Commissioner of Accounts is a judicial appointment by the Judges of the Circuit Court of the County of Loudoun, Virginia, pursuant to *Virginia Code* § 64.2-1200.

The expenses associated with staffing and maintaining an office and compensation to the Commissioner of Accounts for services are derived solely by the fees set by the Circuit Court of the County of Loudoun.

Before making final distribution of Guardianship assets or filing the final account with the Commissioner, you should determine the final fees, costs, and assessments due to the Commissioner of Accounts.

Wm. B. Hanes, Commissioner of Accounts **Phone: (703) 777-5300**
4 Cornwall Street, N.E. **Email: cofa@verizon.net**
Leesburg, Virginia 20176-2814 **FAX: (703) 777-6990**
Office Hours: Monday through Friday - 9:00 a.m. to 5:00 p.m.

Questions concerning these instructions may be made by telephone, in writing or by appointment.

Clerk of the Circuit Court of Loudoun County

Gary M. Clemens, Clerk
P.O. Box 550
Leesburg, Virginia 20178
Attn: Probate Department
Bill Loy, Probate Manager-(703) 777-0272, william.loy@loudoun.gov
Michele Timmons, Senior Probate Specialist- (703)737-8795
michele.timmons@loudoun.gov
Lorrie Gordon, Probate Clerk 703-777-0639 lorrie.gordon@loudoun.gov

Office Hours: Monday through Friday – 9:00 a.m. to 4:00 p.m.

The fees paid to the Clerk of the Circuit Court when the Guardian qualifies to administer a Guardianship are qualification fees required by statute and not fees for review and audit as set forth in the Fee Schedule.

REQUIRED DOCUMENTS TO BE FILED

During your Guardianship administration, you are responsible for filing the following documents:

INVENTORY— a listing of all assets of the minor, valued at the time you were appointed Guardian, over which you have assumed control. This is the initial document filed with the Commissioner of Accounts office. FORM CC-1672

ACCOUNTING— a document showing how you have administered the assets listed on the inventory over a certain period. You must file an accounting annually until all assets have been distributed and your Guardianship duties have been completed. FORM CC-1683

TAKING POSSESSION OF ASSETS

After determining what assets will be under the control and supervision of the Guardian, The Guardian should take possession of those assets.

Note: Your Certificate of Qualification from the Clerk of the Circuit Court is your authority to take possession.

You need to obtain the value of all assets. For Guardianships, it is the value as of the date of the Court Order appointing you Guardian. You need to open a Guardian account. You should open a separate bank or brokerage account immediately. You are not permitted to commingle Guardianship funds with funds belonging to you personally or with funds of any other person or entity, including the minor's non-Guardianship assets.

It is strongly recommended that banks located in Virginia be used for Guardian accounts. A canceled check, a bank produced check image or a copy of the front of the check must be provided.

Keep all paperwork that relates to the funds under your control. This includes canceled checks, bank/investment statements, receipts from the distribution of cash (receipts for cash spent in any amount) or personal items and all documents that show interest income, dividends refunds or receipt of assets.

If you are the Guardian of a minor child with a living parent, you are ***not permitted to disburse any*** principal or income until you receive the approval of this office or the Circuit Court. If you have any questions, consult the Commissioner of Accounts Office.

Make a note of your Guardianship number and include it on all documents submitted to the Commissioner of Accounts Office.

INVESTMENT OF GUARDIAN FUNDS

1. **Time Requirement:** Principal funds must be invested **within four (4) months** from the time such funds come under the control of the Guardian. (*Virginia Code § 64.2-1501*)

2. **Acceptable Securities:** Funds may be invested in acceptable securities as set forth in *Virginia Code § 2.2-4519 and 64.2-1502*, or as permitted by the court order or the will.
3. **Standard of Care for Investments:** The standard of care for investments is set out in *Virginia Code, Article 2 Uniform Prudent Investor Act, § 64.2-781, et seq.* and is referred to as the “prudent investor” rule.
4. **Virginia Banks for Guardianship Accounts:** It is **strongly recommended** that banks located in Virginia be used for Guardianship accounts. A canceled check, bank produced check image or copy of the front of the check must be provided.
5. **Loss in Value of Assets:** The Guardian is responsible for the care, preservation, and management of the minor’s assets.

NOTE: If there is a loss in the value of Guardianship assets due to the negligence or improper conduct of the Guardian, the Guardian is charged with the lost principal, and interest thereon. (Virginia Code § 64.2-1415)

NOTE: GUARDIANSHIP ASSETS CANNOT BE COMBINED OR COMMINGLED WITH THE PERSONAL ASSETS OF THE MINOR OR THE FUNDS OF THE GUARDIAN OR A THIRD PARTY.

INVENTORY FOR GUARDIAN

- A) **PURPOSE:**
The Inventory form is used to show all assets that have come under your control as Guardian. These assets may include bank/savings accounts, certificates of deposit, investment accounts, automobiles, jewelry, household furnishings, real estate, joint ventures, etc.
- B) **WHERE TO OBTAIN:**
You should have received FORM CC-1672 from the Clerk’s Office when you qualified as Guardian. If you do not have this form, go to: www.loudoun.gov/clerk/probate and click on “Forms.”
- C) **WHEN TO FILE:**
A Guardian must file the Inventory within “four months” of the date of qualification. For example, if you qualified on February 1, 2004, the Inventory must be filed by June 1, 2004.
- D) **FORMAT:**
You must submit an original and one copy of the Inventory form signed by each Guardian. The Inventory must be typewritten.
- E) **ACCOMPANYING DOCUMENTS:**
Along with the Inventory, you must submit a check payable to the Commissioner of Accounts for the filing fee. The fees can be found in the Fee Schedule.
- F) **HOW TO FILE:**
Inventories may be filed by mail or in person at the Commissioner of Accounts Office.

G) CHANGES/ADDITIONS:

If additional assets are discovered after you have filed the Inventory, or if you discover you filed an incorrect Inventory, you must file an Amended Inventory with the Commissioner of Accounts office. Submit an original and one copy of the Amended Inventory, together with a check for filing fees of \$41.00 (\$25.00 Commissioner's fee and \$16.00 Clerk's fee) payable to the Commissioner of Accounts.

ACCOUNT FOR GUARDIAN

A) PURPOSE:

The accounting is a document that details what has happened to the assets you listed on the Inventory over a certain period of time. The Account must contain all receipts/income received, all disbursements or distributions made over the accounting period together with a list of all assets remaining at the end of the accounting period.

Receipts/income items include interest income, dividends, short-term and long-term gains, and assets discovered after the filing of the inventory.

Note: Transferring an asset from one account to another, e.g., from a savings account to a checking account, should not be shown as a receipt or disbursement.

Disbursements are payments made for administrative expenses (for example legal or accounting fees).

Distributions are payments made to or for the benefit of the minor **IF** approved by the Commissioner or the Circuit Court in accordance with Virginia Code §64.2-1801 *prior to distribution*.

B) WHERE TO OBTAIN:

You should have received FORM CC-1683 from the Clerk's Office when you qualified as Guardian. If you do not have this form, go to <http://www.loudoun.gov/clerk/probate>.

C) WHEN TO FILE:

The first accounting is due within six (6) months of the date of qualification and must cover the first four months of the Guardianship (Code of Virginia §64.2-1305). Second and subsequent accounts are due within 16 months from the ending date of the prior report and should cover a 12-month period. A final accounting may cover less than 12 months.

Example: If you were appointed June 30, 2004, the first accounting would be due by December 30, 2004, and would cover the period from June 30, 2004, to October 30, 2004. The second accounting would be due by February 30, 2006 and cover the period October 30, 2004 to October 30, 2005.

*Note: A Guardian **may** be allowed to report every three years instead of annually after an accounting has been filed that reflects assets of less than \$15,000 (Code of Virginia §64.2-1313). This request may be rejected or the privilege may be revoked should the Guardian fail to timely file or properly administer and account for the Guardianship assets.*

IN GUARDIANSHIPS INVOLVING MORE THAN ONE CHILD, YOU MUST FILE A SEPARATE INVENTORY AND ACCOUNTING(S) FOR EACH MINOR.

D) FORMAT:

You must submit an original and one copy of the accounting signed by each Guardian. Accountings must be typewritten or computer generated and the pages must be numbered in sequential order.

E) ACCOMPANYING DOCUMENTS:

Along with the accounting, you must submit:

A check payable to the Commissioner of Accounts for the filing fees, the fees can be found in the Fee Schedule.

A canceled check, a bank produced check image or a copy of the front of the check **AND** invoice or signed receipt *from each* payee must be provided in support of each disbursement and must be organized in the same order as they appear on the accounting.

Copy of signed HUD-1 (settlement sheet) for any sale of real estate and brokerage statements to support the sale of stocks, bonds or other securities.

Documentation that shows the value of each asset remaining on hand. All accountings, other than the final accounting, must contain an itemized list of the assets remaining in the hands of the Guardian at the end of the accounting period.

Bank statements for checking and savings accounts covering the accounting period must be provided. The final statement's balance must agree with the final balance shown on your accounting.

Brokerage account statements or statements for stocks, bonds, and other securities or funds held, covering the entire accounting period. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or provide a statement from a bank officer certifying the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the account.

Titles for cars, boats, etc.

Original notes unless a bank or other agency is handling the collection of the notes. In these instances, a statement from the bank or other agency certifying the identity of the holder and the principal balance as of the ending date of the accounting will be accepted.

Note: A final accounting must show ZERO assets on hand. No assets may be held in escrow by the Guardian for any reason.

E) HOW TO FILE:

Accountings may be filed by mail or in person at the Commissioner of Accounts Office.

F) CHANGES/ADDITIONS:

If additional assets are discovered after you have filed the Accounting, or if you discover you filed an incorrect Accounting, you should contact the Commissioner of Accounts office.

GUARDIANSHIP COMPENSATION

If you have any questions regarding Guardianship compensation, please contact the office of the Commissioner of Accounts at 4 Cornwall Street, NE, Leesburg, VA 20176 (703-777-5300)

****BEFORE YOU TAKE A FEE****

- A Guardian is entitled to "**reasonable**" compensation for administering a guardianship estate. (*Virginia Code § 64.2-1208*)
- The Guardian's compensation is for the **complete** handling of the guardianship estate. **Compensation is not an honorarium but is based on services rendered by the Guardian.**

Fee Schedule Guideline *

Principal Fee (Taken annually)

1% of first \$500,000 (.01)

$\frac{3}{4}$ of 1% of next \$500,000 (.0075)

$\frac{1}{2}$ of 1% of \$1,000,000 through \$9,999,999 (.005)

Over \$10,000,000 – by agreement with the Commissioner (consultation required)

AND

Income Fee (Taken annually)

5% of income receipts (not including capital gains)

**The Commissioner of Accounts may deviate from these guidelines on a case-by-case basis if necessary to insure that each Guardian receives "reasonable compensation" for services provided.*

- A) Compensation is allowed on an annual basis, based on fair market value of the guardianship assets (i.e., principal and undistributed income) at the beginning of the accounting period. Previously distributed income, of course, is not to be counted in determining compensation. Where the required accounting is for a period of less than one full year, the compensation should be pro-rated.
- B) The Commissioner will also allow a deviation from the above fee schedule if the will or court order clearly sets out the Guardianship compensation in a specific dollar amount or percentage.
- C) Fees paid to an attorney or accountant employed to perform duties that could be performed by the Guardian, will be deducted from the compensation due to the Guardian. "Reasonable fees" paid to attorneys or accountants for tax work or litigation or other professional services reasonably necessary for the orderly administration of the estate need not be deducted from the Guardian's compensation.

SUCCESSOR GUARDIANS

Where a Guardian is succeeded by another, the annual fees shall be pro-rated. More than one full fee may be allowed, but only if the Commissioner of Accounts or the court determines this to be appropriate.

CO-GUARDIANS

One fee will be divided equally among the Co-Guardians. The Co-Guardians may agree among themselves on a different division. In case of a dispute concerning the division of the fee, the Commissioner of Accounts may hold a hearing to resolve the dispute, but only if ALL of the Guardians first agree to the use of this hearing procedure.

NOTE: Prior to paying compensation fees on principal, income and appreciation of principal assets that exceed the guidelines set forth above, the Guardian **must request approval in writing from the Commissioner of Accounts.** Justification and documentation in support of fees in excess of fees set forth in the guidelines must be submitted to the Commissioner with the Guardian's written request.

BOND AND CORPORATE SURETY

A) GENERAL:

Your bond is your guarantee that you will perform your Guardian duties as required by law. The Court Order of Appointment will set the amount of the Guardian's bond and govern whether the bond is with or without surety. The Commissioner of Accounts examines and reports to the Court on the sufficiency of bond of the Guardian. (Virginia Code 64.2-1204)

B) SURETY:

A surety bond is a guarantee by a third party (usually an insurance or bonding company) that a Guardian will properly account for all money and property owned by the minor and that the Guardian will discharge his/her Guardian duties as required by law.

C.) NEW BOND:

If there is an increase in the value of the assets under your control and the dollar value of the assets become greater than the dollar amount set on your bond at the time of your qualification, a new bond will be required by statute. You will receive notification from the Clerk and the Commissioner of Accounts if applicable during your administration. You must appear before the Clerk to execute the new bond and bring your surety Bond Company with you if the bond is with corporate surety. If you do not sign a new bond by the deadline given in your notice, your powers of appointment may be revoked due to an insufficient bond.

D.) BOND REDUCTION:

If there is a decrease in the value of the assets under your control and the dollar values of the assets become less than the dollar amount set on your bond at the time of your qualification, you can request a reduction in the amount of the bond. A bond reduction request can only be considered after an inventory or accounting has been approved by the Commissioner of Accounts showing that the assets on hand, plus anticipated income, are less than the current bond amount. You would have to appear before the Clerk to sign a new bond with a reduced dollar amount. If your bond was with corporate surety the surety bond company would have to appear with you.

PENALTIES

THE CODE OF VIRGINIA PROVIDES FOR CERTAIN PENALTIES IF A GUARDIAN DOES NOT PROPERLY FILE REQUIRED DOCUMENTS WITH THE COMMISSIONER'S OFFICE IN A TIMELY MANNER. ANY PENALTIES ARE TO BE PAID FROM THE GUARDIAN'S PERSONAL ASSETS AND NOT FROM GUARDIAN ASSETS.

A) LATE FEE

For failure to file an inventory, accounting or supporting documentation within the time required by law, the Guardian will be assessed a late filing fee.

GUARDIANS WHO FAIL TO SETTLE THEIR ACCOUNTS IN A TIMELY MANNER SHALL FORFEIT THEIR COMMISSIONS UNLESS GOOD CAUSE CAN BE SHOWN FOR THEIR DELAY.

B) SUMMONS

If the Guardian fails to respond to letters from the Commissioner of Accounts regarding the filing of an inventory or accounting or fails to provide appropriate supporting documentation, a summons will be issued and served upon the Guardian by the Sheriff. Upon service, the Guardian has thirty (30) days in which to submit the required information to the Commissioner of Accounts.

C) COURT APPEARANCE

If the summons deadline is not met, the Commissioner of Accounts will report the delinquency to the Court and request that a Show Cause Order be entered against the Guardian.

After the Court issues a Show Cause Order, the Guardian will be required to appear in the Circuit Court of Loudoun County. The Guardian must then explain to the Judge why he/she has not complied with the law. The Court may revoke the Guardian's powers and may also impose a fine not to exceed \$500.

In accordance with Virginia Code § 64.2-1216, any Guardian who is a practicing attorney at law and fails to respond to a summons shall be reported to the Virginia State Bar.

D) NOTICE REGARDING CHANGE OF RESIDENCY

Please report any change of address or phone number to the Clerk's Probate Department and the Commissioner of Accounts within thirty (30) days of the date of the change. Any

person who fails to so inform the Clerk and the Commissioner of Accounts shall be subject to a **civil penalty of \$50.00**. Virginia Code § 64.2-1409.

GUARDIANS OF MINORS

DEPENDING ON THE TYPE OF GUARDIANSHIP, THERE ARE DIFFERENT RULES REGARDING ALLOWABLE EXPENDITURES. YOU SHOULD CONTACT THE COMMISSIONER OF ACCOUNTS OFFICE BEFORE SPENDING ANY GUARDIANSHIP FUNDS.

GUARDIANSHIP WHERE MINOR HAS NO LIVING PARENT

The Court Order appointing you Guardian should set the allowable expenditures. If it does not, contact the Commissioner of Accounts office before spending any Guardianship funds.

Exceptions:

Costs of administration, i.e., bond premium, filing fees and Guardianship compensation.

GUARDIANSHIP WHERE MINOR HAS A LIVING PARENT:

You may not spend any of the minor's assets – income or principal – for any reason, including for the health, education, maintenance, or support of the minor, without the prior approval of the Commissioner of Accounts or the Court. (Code of Virginia § 64.2-1801) Except that you may use the minor's assets to pay the normal administrative expenses, i.e., surety bonds premiums, court approved costs for filings and recordings and Guardian commission/compensation.

TO OBTAIN APPROVAL FOR EXPENDITURES OF GUARDIANSHIP ASSETS OF UP TO \$3,000 IN ANY CALENDAR YEAR, YOU MUST WRITE A LETTER TO THE COMMISSIONER OF ACCOUNTS OUTLINING THE NEED AND REQUESTING A HEARING DATE. IF THE MINOR IS FOURTEEN YEARS OF AGE OR OLDER, HE/SHE WILL BE GIVEN WRITTEN NOTICE OF THE HEARING FIVE DAYS BEFORE THE SCHEDULED DATE. AT THE HEARING, YOU MUST PROVIDE INFORMATION TO PROVE ONE OF THE FOLLOWING:

1. The parent is unable to completely fulfill the parental duty of the supporting child.
2. The parent cannot, for some reason, be required to provide such support.
3. The proposed expenditure is beyond the scope of parental duty to support. This usually means that the expenditure or distribution is for a non-necessity that a parent has no duty to provide.

TO OBTAIN AUTHORITY FOR EXPENDITURES IN EXCESS OF \$3,000.00 TO OR ON BEHALF OF A MINOR, WHO HAS A LIVING PARENT, YOU MUST FILE A PETITION WITH THE CIRCUIT COURT.

GENERAL

1. A Guardian may not lend money to himself/herself.
2. A Guardian should not invest in real estate or lend money to third parties without obtaining approval from the Commissioner of Accounts.

3. All of the minor's assets should be properly titled with Guardian's name followed by "Guardian for" Minors name. Example: John Brown, Guardian for Justin Brown.
4. No assets may be held jointly nor may they be held under the Uniform Transfers to Minors Act. If more than one Guardian has been appointed, the assets must be titled in the name of all Guardians.